

BEFORE THE  
POLLUTION CONTROL HEARINGS BOARD  
STATE OF WASHINGTON

IN THE MATTER OF  
MAX SIMPSON,  
d.b.a. BEVERLY COURT APARTMENTS,

Appellant,

vs.

SOUTHWEST AIR POLLUTION  
CONTROL AUTHORITY,

Respondent.

PCHB No. 270

FINDINGS OF FACT,  
CONCLUSIONS AND ORDER

This matter, the appeal of a \$50.00 civil penalty for an alleged smoke-emission violation of respondent's Regulation I, came before the Pollution Control Hearings Board (Walt Woodward, presiding officer) in the conference room of respondent's Vancouver, Washington office at 1:00 p.m., June 22, 1973.

Appellant appeared pro se; respondent through its counsel, James D. Ladley, Thomas E. Archer, Kelso court reporter, reported the proceedings.

Witnesses were sworn and testified. Eight exhibits were admitted.

From testimony heard, exhibits examined and transcript reviewed, the

1 Pollution Control Hearings Board makes these

2 FINDINGS OF FACT

3 I.

4 On October 26, 1972, from the furnace stack of the Beverly Court  
5 Apartments, 511 West Evergreen Boulevard, Vancouver, Clark County, there  
6 was emitted for at least fourteen minutes black smoke darker in shade than  
7 No. 3 on the Ringelmann scale. An air quality control officer on  
8 respondent's staff observed the emission. Respondent issued to appellant  
9 a Notice of Violation in the amount of \$50.00, citing Section 4.02 of  
10 respondent's Regulation I. Collection of the penalty was suspended by  
11 respondent pending no further violations by appellant of respondent's  
12 Regulation.

13 II.

14 On January 3, 1973, the Beverly Court Apartments was cited by  
15 respondent for another smoke-emission violation of Regulation I and  
16 on March 4, 1973, appellant paid respondent the \$50.00 civil penalty  
17 invoked for the January 3, 1973 violation. Collection of the penalty  
18 for the October 26, 1972 violation is the subject of this appeal.

19 III.

20 Section 4.02 of respondent's Regulation I makes it unlawful to  
21 cause for more than three minutes in any one hour an air contaminant  
22 emission darker in shade than No. 2 on the Ringelmann scale. Section 4.07  
23 of respondent's Regulation I provides that emissions which exceed this  
24 standards of Regulation I will not be deemed violations if they are  
25 caused by an unavoidable breakdown of equipment which is reported  
26 immediately to respondent.

27 FINDINGS OF FACT,  
CONCLUSIONS AND ORDER

IV.

Appellant, a resident of Baker, Oregon, and an absentee owner of the Beverly Court Apartments, believes the October 26, 1972 emission to have been caused by an unavoidable malfunction of the apartment furnace. Appellant has informed respondent in writing that he has issued an order to the apartment manager to report all such breakdowns immediately to respondent.

From these Findings, the Pollution Control Hearings Board comes to these

CONCLUSIONS

I.

Appellant was in violation of Section 4.02 of respondent's Regulation I on October 26, 1972 and his apartment manager did not avail himself of the mitigating provisions of Section 4.07 of respondent's Regulation I.

II.

The instant penalty was for a first violation by appellant of Section 4.02 of respondent's Regulation I and the \$50.00 penalty is not unreasonable.

Therefore, the Pollution Control Hearings Board issues this

ORDER

The appeal is denied, and the civil penalty is affirmed.

1 DONE at Lacey, Washington this 11<sup>th</sup> day of July, 1973.

2 POLLUTION CONTROL HEARINGS BOARD

3 Walt Woodward  
4 WALT WOODWARD, Chairman

5 W. A. Gissberg  
6 W. A. GISSBERG, Member

7 James T. Sheehy  
8 JAMES T. SHEEHY, Member

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26 FINDINGS OF FACT,  
CONCLUSIONS AND ORDER